ACLU
AMERICAN CIVIL LIBERTIES UNION of MONTANA

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EXHIBIT 8
DATE 10 JAN 07
SB 156

January 10, 2007
Testimony SB 156

Chairman Laslovich and Members of the Committee,

For the record, my name is Scott Crichton and I have the privilege of serving as the Executive Director of the ACLU of Montana- a membership organization of 2,400 dues paying households which envision a world where dignity, freedom and civil liberties are a reality for each individual. I stand today to speak against SB 156.

This bill is troubling in at least two ways. It re-enforces a concept that is one of the elements of our ever bourgeoning prison population- that is, mandatory sentencing. And it goes further down the road toward eviscerating a fundamental concept in how we as a society have in the past distinguished treating juveniles differently than we treat adults.

I will not go into detail here about why mandatory sentencing undermines the role of the independent judiciary and exacerbates prison overcrowding. Rather, I want to focus on why this bill is objectionable for its mixing of adult sanctions with the Youth Court Act.

When I first came to the ACLU in 1988, Curt Chisholm was the Director of what was then the Department of Institutions. In 1989, Mr. Chisholm requested of then Attorney General Racicot a legal opinion on the following question: Does the registration portion of the Sexual Offender Registration Act apply to a person under 18 who has been adjudicated pursuant to the Youth Court Act, but whose conduct, had he been an adult, would have been a violation of the offenses enumerated in the Sexual Offender Registration Act?

On November 29, 1989, the Attorney General of the State of Montana held: A juvenile who is adjudicated delinquent under the Youth Court Act and whose case has not been transferred to district court is exempt from the registration requirement of the Sexual Offender Registration Act.

I would hope that both the Department of Corrections and the Department of Justice would point out to members of this committee that youth are adjudicated

in civil proceedings and are not convicted of crimes, and what is significant about that distinction. There are good reasons for this disparate treatment based upon widely understood understandings of adolescent development and behavior.

Certainly that is set forth in **41-5-106. Order of adjudication -- noncriminal.** No placement of any youth in any state youth correctional facility under this chapter shall be deemed commitment to a penal institution. No adjudication upon the status of any youth in the jurisdiction of the court shall operate to impose any of the civil disability imposed on a person by reason of conviction of a criminal offense, nor shall such adjudication be deemed a criminal conviction, nor shall any youth be charged with or convicted of any crime in any court except as provided in this chapter. Neither the disposition of a youth under this chapter nor evidence given in youth court proceedings under this chapter shall be admissible in evidence except as otherwise provided in this chapter. **History:** En. 10-1235 by Sec. 35, Ch. 329, L. 1974; amd. Sec. 11, Ch. 571, L. 1977; R.C.M. 1947, 10-1235; amd. Sec. 55, Ch. 609, L. 1987.

Children behave in inappropriate ways quite often because they know only inappropriate models. We have distinguished between Youth Court and adult criminal proceedings for good reasons. Courts may at their discretion, if adult sanctions are required, transfer to district court. But to mix adult sanctions and the youth court act is not what was intended in establishing that act. Please scrutinize Section 10 of this bill, subsections (10) and (11) as it applies to the distinction between "adjudicated youth" and "criminally convicted adults".